

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DEREK FOLLEY,

Petitioner,

: Case No. 3:22-cv-065

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

KEITH J. FOLEY, Warden,

:

Respondent.

REPORT AND RECOMMENDATION

This habeas corpus case, brought *pro se* by Petitioner Derek Folley under 28 U.S.C. § 2254, is before the Court on Folley’s Motion for Summary Judgment “in Pursuant to *Snow*¹ Violation – Double Jeopardy Violation” (ECF No. 49) and his Motion for Summary Judgment Pursuant to Speedy Trial Violation (ECF No. 51). Because these are dispositive motions, they require a report and recommendation from the assigned Magistrate Judge

This case is still in the pleading stage; the Court has ordered the Respondent to answer the Petition (ECF No. 38), but the answer and State Court Record are not due to be filed until May 9, 2022. It is completely inappropriate to even consider a motion for summary judgment until the Warden has had an opportunity, guaranteed by the Due Process Clause, to present the State’s defenses.

¹ *Ex parte Snow*, 120 U.S. 224 (1887).

Petitioner should correct the caption for future filings to show the case is assigned to District Judge Rose and Magistrate Judge Merz, and not to Judges Marbley and Rice.

Conclusion

Petitioner's Motions for Summary Judgment should therefore be denied without prejudice to their renewal after the record is complete.

March 22, 2022.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #